

International Trade Agreements: What Do They Mean for Vermont's Energy, Food & Agriculture, and Environmental Policies?

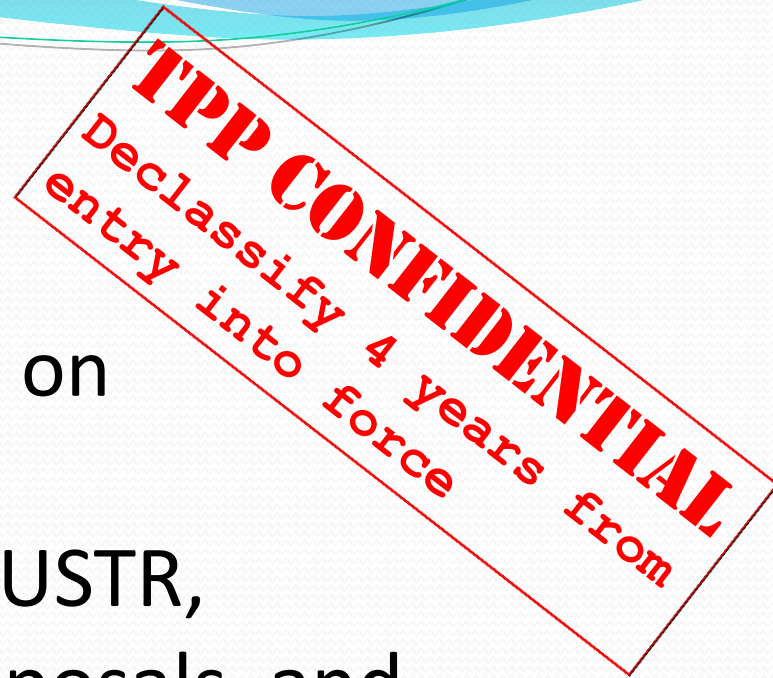
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Vermont Legislature
Montpelier, Vermont
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Overview

- Who makes trade policy?
- Free trade agreements under negotiation
- Trade basics
- Case studies: Potential impact of pending Pacific Rim and US-EU trade deals on state & federal energy, environment, food policies
- Where things stand today
- What can you do?

Disclaimer

- TPP & US/EU text secret
- This presentation is based on
 - reports in the media,
 - public statements by USTR,
 - leaked and public proposals, and
 - previous FTAs and investment treaties
- The actual text may differ from prior agreements and leaked text.



Who Makes Trade Policy?

- Office of the US Trade Representative is in the Executive Office of the President
- Advisory Committee system dominated by corporations
- The Executive Branch negotiates treaties, but Congress must approve
- “Fast track” trade promotion authority: up-or-down vote, NO AMENDMENTS
- President Obama seeking to reinstate fast track authority; pending legislation

Advisory Committees

Advisory Committees

Cleared Advisors

Advisory Committee for Trade Policy and Negotiations (ACTPN)

Agricultural Policy Advisory Committee (APAC)

Agricultural Technical Advisory Committee for Trade (ATAC)

Industry Trade Advisory Committees (ITAC)

Intergovernmental Policy Advisory Committee (IGPAC)

Labor Advisory Committee (LAC)

Trade Advisory Committee on Africa (TACA)

Trade and Environment Policy Advisory Committee (TEPAC)



Who has most of the seats at the table?

INDUSTRY TRADE ADVISORY COMMITTEES

Cleared Advisors

Committee of Chairs of the Industry Trade Advisory Committees

ITAC 01 - Aerospace Equipment

ITAC 02 - Automotive Equipment and Capital Goods

ITAC 03 - Chemicals, Pharmaceuticals, Health Science Products and Services

ITAC 04 - Consumer Goods

ITAC 05 - Distribution Services

ITAC 06 - Energy and Energy Services

TAC 07 - Forest Products

ITAC 08 - Information and Communications Technologies, Services, and Electronic Commerce

ITAC 09 - Non-Ferrous Metals and Building Materials

ITAC 10 - Services and Finance Industries

ITAC 11 - Small and Minority Business

ITAC 12 - Steel

ITAC 13 - Textiles and Clothing

ITAC 14 - Customs Matters and Trade Facilitation

ITAC 15 - Intellectual Property Rights

ITAC 16 - Standards and Technical Trade Barriers

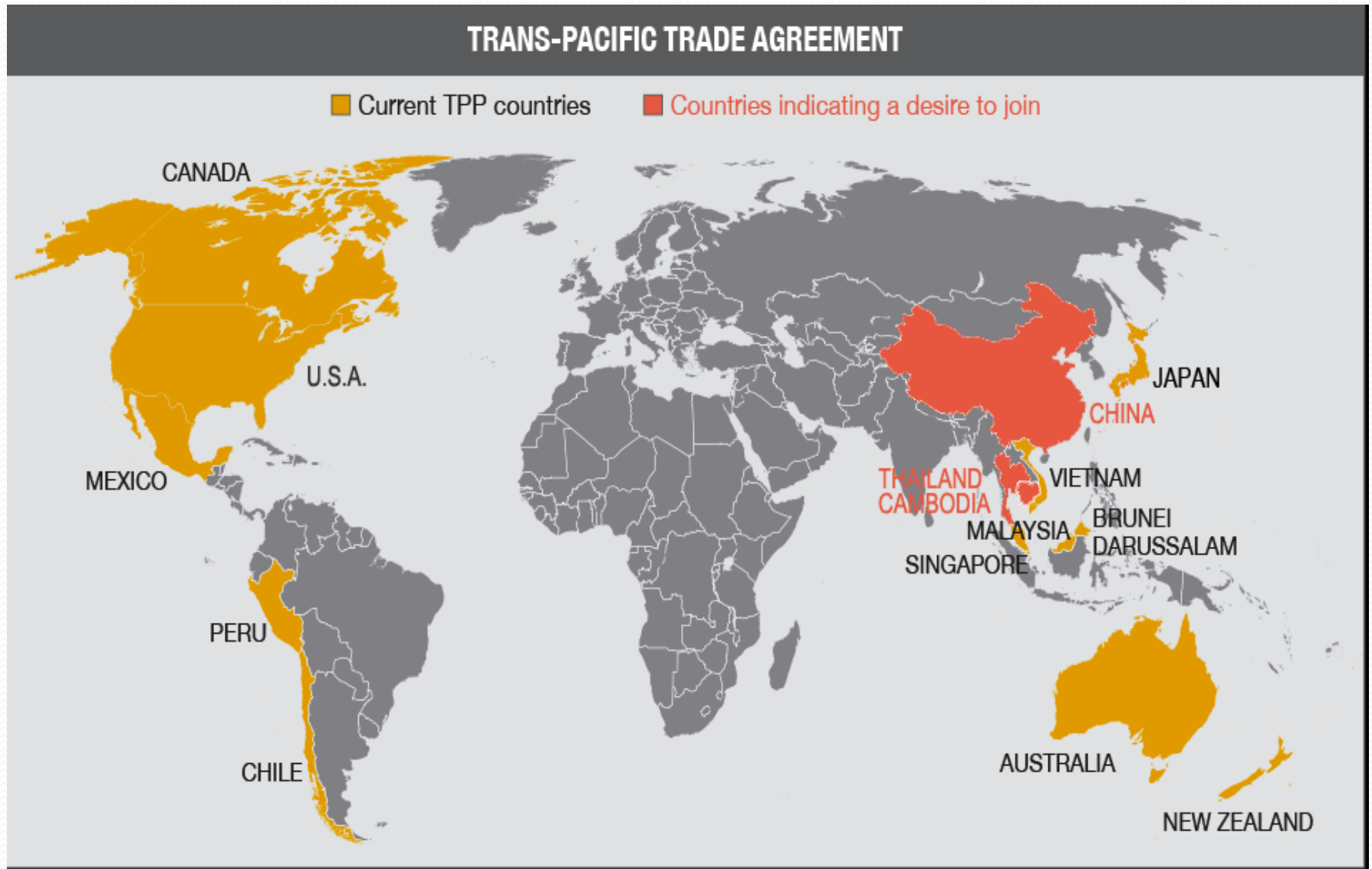


7 US States' Role in Trade Policy



- Limited role advising on trade policy
 - Formal state role: IGPAC
 - Lack of transparency – secret texts
 - Lack of state expertise, funding, awareness
- Yet state laws have been challenged in trade disputes under NAFTA and the WTO and could be challenged pursuant to the treaties now under negotiation

What is the TPP?



What is the TPP?

- **USTR website:** *“The TPP agreement is an important element of the Obama Administration’s efforts to support the creation and retention of high-quality jobs for Americans by increasing exports to the vibrant economies of the Asia-Pacific region. .. a comprehensive, next-generation agreement.”*
- **Public Citizen website:** *“TPP: Corporate Power Tool of the 1% ...a stealthy policy being pressed by corporate America, a dream of the 1 percent” and “NAFTA on steroids”*

What is the TPP? A Big Deal!

- Negotiations in the 4th year for a comprehensive Pacific Rim trade agreement; now in the “end game”
- Current member countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam
- Current TPP members represent about 40% of global GDP – and additional countries can join after it is finalized
- TPP includes some of America’s top trading partners – Canada (1st), Mexico (3rd), Japan (4th) – and collectively accounted for \$1.5 trillion in trade with the United States in 2012
- 29 Chapters in the agreement, *only one relates to traditional trade barriers such as tariffs*

What is T-TIP (U.S.–EU FTA)?



TTIP (U.S. – EU FTA)

- 28 member countries in EU
- The EU-US economic relationship is already the world's largest, accounting for half of global economic output and nearly one trillion dollars in goods and services trade
- Negotiations formally began in 2013; 4th round is ongoing this week in Brussels
- Unlike TPP, small risk of off-shoring jobs
- But like TPP, large risks for states in terms of right to regulate/legislate

Who remembers the WTO?

TPP + EU/US = WORLD

New agreements intended to be “*WTO Plus*”

Some Case Studies

- RENEWABLE ENERGY
- FRACKING
- CHEMICAL POLICIES
- GMO LABELING
- AGRICULTURAL PROCUREMENT,
“BUY LOCAL”



Some Trade Law Basics

What is a “Non-Tariff Barrier”?

- It could be a direct or indirect subsidy viewed as favoring a country’s companies unfairly (example: solar tax rebates)
- It could be a permit fee viewed as excessive (example: casino or industrial plant licensing fee viewed as excessive)
- It could be a business regulation viewed as overly burdensome, unnecessary, duplicative or costly (example: product labeling beyond federal standards; COOL food labeling)

Five TPP/TTIP Chapters

- Investment
- Intellectual Property
- Services
- Technical Barriers to Trade
- Regulatory Coherence



Enforcing trade rules: The US is seeking NAFTA-style investor-state dispute settlement (ISDS) in both TPP and TTIP

- Trade provisions can be enforced through government-to government dispute resolution
- NAFTA and the (leaked) TPP investment chapter allow corporations and subsidiaries based in member nations to sue governments directly for cash compensation in private trade tribunals, either avoiding the courts altogether or double-dipping when they don't like the outcome of a court decision

Energy Policy



Trade Challenges to Feed-in Tariffs and Renewable Portfolio Standards

- 2011 EU and Japanese WTO case against Ontario's Feed-in Tariff program which allowed producers of wind & solar energy to sell electricity to Ontario grid at higher rate than that paid for conventional energy; higher rate linked to use of Ontario goods & services **(Ontario lost and revised its program)**
- Canada asserts that US state-level **Renewable Portfolio Standards (RPS)** discriminate against Canadian exports of hydropower.

Trade Challenges to State Renewable Energy Programs under the WTO

2011 Chinese investigation of renewable energy programs in **California**, **Massachusetts**, **New Jersey**, **Ohio**, and **Washington** in retaliation for US trade challenges to China's subsidized solar panel and wind industries

Trade Challenges to State Renewable Energy Programs under the WTO

Example: Washington State's Renewable Energy Cost Recovery Program authorizes an incentive payment to help offset the costs associated with the purchase and use of electricity-producing renewable energy systems located in Washington state

Ministry of Commerce of the People's Republic of China Announcement No. 52 2012:

“MOFCOM will take relevant measures in accordance with the law to require the U.S. to cancel the content of the measures under investigation inconsistent with WTO agreements”

“The final investigation conducted by MOFCOM determines that six investigated measures...[INCLUDE] prohibited subsidies stated in the Article 3 of Subsidy and Countervailing Measures Agreement formulated by WTO with violation of the relevant provisions in the Article 3 of WTO Subsidy and Countervailing Measures Agreement and the Article 3 of 1994 General Agreement on Tariffs and Trade, as a consequence, it distort the normal trade and constitutes the trade barrier to the Chinese renewable energy products exports to the U.S.

Source: China Ministry of Commerce Website

Rep. Sharon Treat: Trade Impact Vermont

TPP & TTIP WILL INCREASE LNG EXPORTS (AND PRODUCTION)

- 1992 amendment to Natural Gas Act intended to speed up imports of natural gas from Canada into the US
- The law requires the Department of Energy (DOE) to deem applications for import and export of natural gas between the US and any nation “*with which there is in effect a free trade agreement requiring **national treatment** for trade in natural gas*” to be consistent with the public interest. Such applications must be “*granted without modification or delay.*”
- As far as we know, DOE has not sought, nor has USTR included, an exception for natural gas from the national treatment provisions

International standard-setting, biofuels and climate policy

The WTO's Technical Barriers to Trade (TBT) agreement obligates US states to use international standards “as the basis for” technical regulations

- Failure to follow a standard creates a risk of trade disputes from countries whose industries stand to lose market share; a threat of trade conflict could support federal preemption of state law
- The initiative to harmonize biofuel standards has been ongoing since 2007 through the International Organization for Standardization (ISO); mostly petroleum industry participants

Alternatively....

Could TTIP mandate eliminating or reducing fossil fuel subsidies to advance climate-friendly policy?

- The most ambitious TTIP scenario predicts an ***increase*** of 11.8 million tons of CO₂ emissions: 3.9 million tons in the US, 3.6 million tons in the EU and 4.3 million tons in China due to carbon leakage attributable to its “less environment-friendly product techniques”
- OECD has estimated that elimination of fossil fuel subsidies could lead to a 10% reduction in the emissions of greenhouse gases by 2050
- EU Green Budget study and European Greens Group Paper; Brussels Roundtable this week

Fracking Regulations Challenged



Lone Pine Has Filed Suit under NAFTA to Challenge Quebec's Fracking Moratorium

- Seeks \$250 million in damages in case against Canada
- Claims "arbitrary, capricious, and illegal revocation of the Enterprise's valuable right to mine for oil and gas under [Quebec's] Saint Lawrence River"
- Claims Quebec's action reduces the "expectation of a stable business and legal environment"
- Claims "expropriation" of its "right" to mine for oil and gas, which is unlawful because "there no valid public purpose to the moratorium"
- Claims "the Act violated Lone Pine's legitimate expectation of a stable business and legal environment."

TPP investment chapter – worse than NAFTA?

LEAKED INVESTMENT CHAPTER includes sweeping definition of “investor”: an investor just needs to “attempt” to make an investment by a concrete action, such as “channeling resources or capital in order to set up a business” or *applying* for permits and licenses.(Art 2.2, fn8). Once a firm can claim “substantial business activities” in the TPP country, which can be pretty minimal, it can sue.

TPP – worse than NAFTA?

LEAKED INVESTMENT CHAPTER TEXT includes **sweeping definitions of “investment”**:

- any asset owned or controlled by an investor, directly or indirectly *whose characteristics include a commitment of capital or other resources, expectation of gain or profit, or assumption or risk* (Art 12.2).
- Would include shares, enterprises, including subsidiaries and branches (insurance companies), contracts (charter schools?), licenses and permits (mining or water rights), trademarks (such as tobacco images), land and property (mall developers, long term care chains), bonds and loans (mortgages), futures and derivatives.

TPP investor protections

LEAKED INVESTMENT TEXT: Investors would be guaranteed:

- *A “minimum standard of treatment”, including “fair and equitable treatment” (Art 12.6).* This sounds benign but is the most common ground for investment disputes, and has been interpreted to mean a legitimate expectation of a stable and predictable business environment that is not impaired by new regulatory or taxation measures.
- *Protection against expropriation or indirect expropriation (Art 12.12):* government measures that reduce the value of the investment or its expected future profits.

Vermont Fracking Ban: Green Mountain State Is First In U.S. To Restrict Gas Drilling Technique

AP | Posted: 05/16/2012 3:16 pm Updated: 05/18/2012 11:27 am

“MONTPELIER, Vt. (AP) — Vermont Gov. Peter Shumlin on Wednesday signed into law the nation's first ban on a hotly debated natural gas drilling technique that involves blasting chemical-laced water deep into the ground.

The Democrat, surrounded at a Statehouse ceremony by environmentalists and Twinfield Union School students who pushed for the ban, said the law may help Vermont set an example for other states. The ban may be largely symbolic, though, because there is believed to be little to no natural gas or oil beneath the surface in Vermont....”

Report Findings: 20 Years of NAFTA's Impact on Environment

- Facilitated expansion of large-scale, export-oriented farming that relies heavily on fossil fuels, pesticides, and GMO
- Encouraged a boom in environmentally destructive mining activities in Mexico
- Undermined Canada's ability to regulate tar sands industry, locking it into shipping large quantities of fossil fuels to the US
- Failed to safeguard against the increase in air and water pollution associated with manufacturing growth
- Weakened domestic environmental safeguards with new legal avenues to challenge environmental policymaking

Report:

http://action.sierraclub.org/site/DocServer/0642_NAFTA_Report_05_web_high.pdf docID=15301

“Harmonizing” Downward with TTIP



Chemical industry very clear about TTIP goals: Weaker is Better

DUPONT TESTIMONY: *"...DuPont strongly supports elimination of all non-tariff barriers to trade....We call on the negotiators to address such issues as **Classification and Labeling** (i.e., UN GHS) implementation; **Chemical hazard management** (TSCA versus REACH); **Endocrine active substances** (EU hazard-based vs. US risk-based approaches); **nanotechnology** and the definition thereof, and **Polymer safety** ..."*

[AVAILABLE HERE:
<http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0353>]

And the Personal Care Products Industry Agrees!

“...we support an ambitious agenda for the TTIP that eliminates existing regulatory barriers for cosmetics and personal care products...Our key objectives for TTIP are”:

- Harmonize definitions & testing requirements for cosmetics, sunscreens
- Revisions of EU’s “Annex II” and automatic ban of ingredients [REACH]
- Eliminate notification & labeling of nano ingredients
- Cooperation, implementation of ICCR [industry group] decisions

[Personal Care Products Council Testimony, May 29 USTR hearing]

Industry Groups Also Want TTIP to Preempt State Pesticide Laws

The United States Council for International Business testified before USTR in May that the U.S./EU Agreement should:

“Prohibit subsidiary political units from imposing approval requirements or restrictions. Approval by the EU or U.S. federal authorities should be adequate to ensure safety across the entire U.S. or the European Union. Subsidiary political units, such as EU Member States or U.S. States should be prohibited from seeking to impose separate requirements for approval or local restrictions on sale or use.”

Possible Preemption: GMO Labeling



Big agriculture wants to use TTIP to overturn GMO labeling in the EU and stop the movement in US states

Richard Wilkins, the treasurer of the American Soybean Association (ASA), testified in May USTR hearing that T-TIP should be used to address GMO labeling requirements in the EU:

“We believe important causes for this sharp decline include the EU’s requirement that food products derived from agricultural biotechnology be labeled, and more recently, the EU’s discriminatory policies on biofuel feedstock under its Renewable Energy Directive (RED),” Wilkins said.

[Agri-Pulse website: <http://www.agri-pulse.com/USTR-hears-concerns-about-US-EU-trade-deal-0532013.asp>]

US and EU Trade Negotiators Share Industry's Interest in "Harmonization"

- The goal set by the TTIP High-Level Working Group is to harmonize differences between US and EU investor protections ***in favor of the most investor-friendly side of the Atlantic***
- 7/20/13 leaked negotiating position of the EU mentions "harmonizing" policies on nanomaterials and endocrine disruptors
- Leaked EU paper proposes that regulatory and labeling requirements should be "not more trade-restrictive than necessary"

State Regulations in Particular are Targeted for Preemption

- Leaked EU paper seeks **federal monitoring** of US state activities with EU to be informed of all draft measures at state level, and specifically mentions prioritization of chemical risk assessment
- Leaked EU paper notes EU exporters' difficulties understanding US state rules and **the need to cover sub-federal regulations** in a TBT ["Technical Barriers to Trade"] agreement

Report on TTIP & Chemical Policy

A Toxic Partnership:

A Critique of the American Chemistry Council- European Chemical Industry Council Proposal for Trans-Atlantic Cooperation on Chemicals

Center for International Environmental Law & Client Earth
(March 2014)

http://ciel.org/Publications/ToxicPartnership_Mar2014.pdf

TTIP and Local Food Initiatives



Will TTIP Procurement Chapter Restrict “Buy Local” and “Farm to School” Policy?

- **Maine CTPC letter 2/26/14:** *“...the EU has stated clearly that it would like to achieve **new commitments** in this agreement on goods and services not already covered in the GPA, as well as its goal to, “[e]nsure that rules on off-sets/set asides or domestic preferences... do not restrict procurement opportunities between the EU and the U.S.”*
- **Report, Promises and Perils of the TTIP: Negotiating a Transatlantic Agricultural Market** - Local food policies viewed as “localization barrier to trade”
http://www.boell.org/downloads/2013_10_25_TTIP_KHK.pdf
- **Leaked “non-paper”:** EU intention to bind US states in procurement chapter (**not** an opt-in)

Where things stand today

- TPP in “end game” - political tradeoffs; meetings continue (even more secret)
- Leaked TPP intellectual property text controversial; also labor, environment, tobacco chapters
- Even the Pope is speaking out on the TPP!
- TTIP (EU/US) negotiations will ramp up after May elections in EU; 3-month “public consultation” on ISDS, new advisory committee appointed
- USTR announced new public interest committee (deadline March 25 to apply)
- “Fast Track” losing support, Congressional letters oppose, timeline for vote unclear (after US elections?)

What can you do?

- Resolution opposing “fast-track” trade promotion
- Resolution on environment, other issues
- Letters to members of Congress, USTR [national state legislator letters on environment and Investor-State]
- Get your Governor to weigh in
- Speak up! Testify at USTR hearings, seek meetings, present at stakeholder forums
- Work with like-minded Canadian and EU parliamentarians
- Hold a hearing on the impact on your state
- Commission a report (CTPC Biennial Assessment)
- Get your Attorney General interested beyond tobacco [NCEL, NY letters]

You, too, can be a “stakeholder”!



Maine Legislature's Bipartisan Resolution Opposing Fast Track



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